

REMARKS/ARGUMENTS

Claim 1 has been amended by incorporating the subject matter of claim 8 into it.

Claims 8 and 13 have been canceled.

The remaining claims have been amended to conform to claim 1 as amended, if necessary.

Claims 1-36 are currently pending, although claims 34-36 have been withdrawn from consideration.

The Office Action rejected the pending claims under 35 U.S.C. § 103 as obvious over U.S. patent 5,556,615 (“Janchitraponvej”) in view of U.S. patent 6,214,326 (“Dupuis”), U.S. patent 4,390,552 (“Jacquet”) and PCT patent application publication no. WO 01/28506 (“Jahedshoar”). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

The claimed invention relates to non-washing compositions containing water, a silicone having quaternary ammonium groups, a specified cationic surfactant, two cationic polymers including at least one specified cationic polymer and one thickening polymer. Significantly, the claims require the presence of at least one cationic polymer which is a cationic polysaccharide or a quaternary polymer of vinylpyrrolidone and of vinylimidazole, and the presence of a cationic surfactant selected from the group consisting of optionally polyoxyalkylenated primary, secondary or tertiary fatty amine salts, quaternary ammonium salts, and mixtures thereof. Compositions containing all of the required ingredients have improved suppleness and texture properties over compositions which do not. The applied references neither teach nor suggest such improved compositions.

Applicants respectfully submit that no *prima facie* case of obviousness has been set forth. Janchitraponvej neither teaches nor suggests the claimed invention for at least the reason that it does not disclose adding any cationic polymers to his compositions, let alone at least two cationic polymers. In fact, Janchitraponvej teaches away from such addition of cationic polymers. Specifically, Janchitraponvej discloses that (a) cationic polymers were known to be conditioning agents (col. 2, lines 35-37); and (b) prior art compositions having cationic compounds could result in hair having reduced elasticity, body and set (col. 2, lines 43-46). Janchitraponvej also states that his invention compositions result in hair having, among other improved properties, improved body. (Col. 16, line 5). Thus, Janchitraponvej discloses conditioning compositions which yield improved results when applied to hair as compared to prior art compositions.

Given that Janchitraponvej neither teaches nor suggests adding cationic polymers to his compositions (even when discussing optional ingredients), given that Janchitraponvej acknowledges that cationic polymers had been used in the past, and given that Janchitraponvej's compositions have improved body properties, one skilled in the art would interpret Janchitraponvej's disclosure as being directed to compositions which exclude cationic polymers but which, instead, focus on the presence of other ingredients to provide the improved properties (for example, body) disclosed therein. Including cationic polymers in Janchitraponvej's compositions would run afoul of at least MPEP §§ 2143.01 V. and VI. which require that, for purposes of making a rejection under 35 U.S.C. § 103, a proposed modification to a prior art reference "cannot render the prior art unsatisfactory for its intended purpose" and "cannot change the principle of operation of a reference." Thus, adding a

cationic polymer to Janchitraponvej's compositions in contravention of Janchitraponvej's disclosure would constitute an impermissible modification of Janchitraponvej's compositions. In other words, no motivation to add cationic polymers to Janchitraponvej's compositions would have or could have existed.

This is particularly true given that Janchitraponvej requires the presence of amidoamine compounds in his compositions. According to Janchitraponvej, such compounds (1) can act like cationic surfactants (col. 8, line 56); and (2) help solubilize the silicone compound in his compositions (col. 11, lines 56-58). Thus, the amidoamine compounds are necessary components of Janchitraponvej's compositions.

In stark contrast, Janchitraponvej's amidoamine compounds are not required by the present invention. Rather, a completely different cationic surfactant is required. Accordingly, the claimed compositions cannot be taught or suggested by Janchitraponvej.

The secondary references do not compensate for Janchitraponvej's fatal deficiencies. None of the cited references would motivate one skilled in the art to add cationic polymers to Janchitraponvej's compositions in the absence of an amidoamine compound, particularly in view of Janchitraponvej's teaching away from the addition of such cationic polymers and the deletion of such amidoamine compounds.

For at least this reason, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103.

Regarding the previously-filed Rule 132 declaration, this declaration demonstrates superior results when combining the two required cationic polymers in the presence of the required cationic surfactant as compared to compositions containing a single polymer. Thus,

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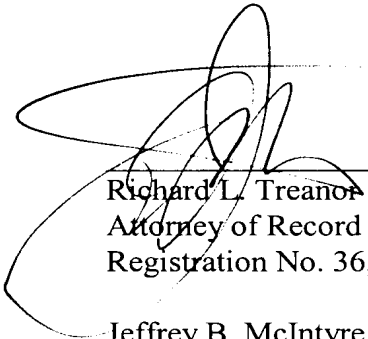
even assuming that a *prima facie* case of obviousness has been set forth (which, as explained above, is not the case), such a hypothetical case of obviousness is easily rebutted by the data in the Rule 132 declaration demonstrating the superior properties associated with the claimed invention. This is particularly true for claim 19.

For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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